

**IN THE UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF OHIO  
EASTERN DIVISION**

**MICHAEL A. DENOEWER,**

:  
: Case No. 2:17-cv-0660

**Plaintiff,**

:  
: Chief Judge Algenon L. Marbley  
:  
: Magistrate Judge Jolson

v.

**UCO INDUSTRIES, INC.,**

:  
:  
:

**Defendant.**

**OPINION & ORDER**

This matter is before the Court on Plaintiff's Motion to Strike. (ECF No. 140). Plaintiff asks the Court to strike Defendant's trial brief (ECF No. 139) as untimely filed. In response, Defendant acknowledges that the brief was untimely but requests that the Court forgive its oversight and accept the brief. (ECF No. 142).

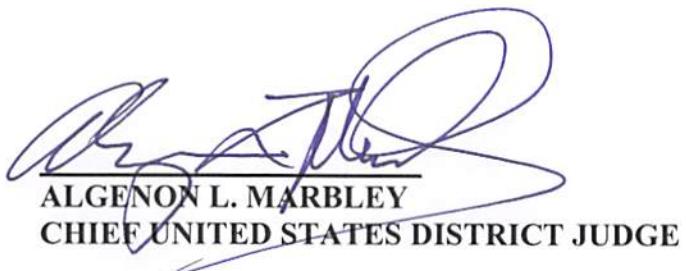
Defendant's trial brief, styled as a Response to Plaintiff's Trial Brief, was filed on September 27, 2021—three days after the deadline stated in the Court's Order Resetting Trial Date. (ECF No. 116 at 1). Plaintiff's Trial Brief (ECF No. 137) was filed timely on September 24, 2021. Parties were advised that if they failed to comply with the Order, the Court would consider imposing sanctions within its discretion and consistent with Federal Rule of Civil Procedure 16(f). (ECF No. 114 at 14).

The purpose of the trial brief is “to instruct the Court in advance of trial in any area of law upon which counsel will rely at trial.” (*Id.* at 7). The trial brief is of greater importance in a case such as this one, where the parties' positions have evolved since summary judgment briefing. Because Defendant's trial brief will be helpful to the Court in its own trial preparation, the Court

is disinclined to strike the brief. Accepting the late brief will not prejudice Plaintiff, who has had adequate time to review the brief and respond to it via this Motion to Strike.

Therefore, Plaintiff's Motion to Strike (ECF No. 139) is **DENIED**. Defendant's trial brief will be received.

**IT IS SO ORDERED.**



ALGENON L. MARBLEY  
CHIEF UNITED STATES DISTRICT JUDGE

DATED: October 1, 2021